

### **REMARKS**

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-10 are presently active in this case. The present Amendment amends Claims 1-3 and 7-10 without introducing any new matter.

The outstanding Office Action, Claim 20 was rejected under 35 U.S.C. § 101 as not being directed to statutory subject matter. Claim 20 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 1-20 are rejected on the grounds of non-statutory, obviousness-type double patenting over Claims 1-18 of U.S. Patent No. 6,763,067.

In response to the rejection of Claim 20 under 35 U.S.C. §§ 101 and 112, first paragraph, Claims 11-20 are herewith cancelled without prejudice or disclaimer.

Moreover Claims 1-3 and 7-10 are amended to correct minor formalities and to clarify certain features. For example, independent Claim 1 is amended to recite “a first verification unit configured to calculate a first occupancy of a buffer of a virtual decoding apparatus if the code were to be supplied to the buffer by a first bit rate.” The remaining claims are amended to correspond to the changes of independent Claim 1. These features find non-limiting support in Applicants’ disclosure as originally filed, for example in the specification starting at p. 15, l. 24, and in the corresponding Figs. 4A, 4B, 5A, 5b, 7A, and 7B, showing a the ordinate labeled with occupancy. No new matter has been added.

In response to the rejection of Claims 1-20 under the non-statutory obviousness-type double patenting rejection doctrine, Applicants respectfully submit that the reference Hurst, being U.S. Patent No. 6,763,067, does not qualify for such a rejection because the present application and U.S. Patent No. 6,763,067 were never commonly owned.

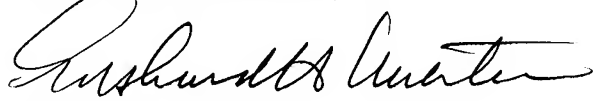
The current assignee of the present application is Kabushiki Kaisha Toshiba, and the assignee that was assigned the patent rights from inventor Hurst of the U.S. Patent No. 6,763,067 is Sarnoff Corporation, and those patent rights were later assigned to the company Mediatek USA, Inc., recorded on January 18, 2008, which is a different entity than the assignee in this case. Therefore, Applicants respectfully submit that the obviousness-type double-patenting rejection is improper, and request reconsideration of the rejection.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-10 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

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**Total Assignments: 3****Patent #:** [6763067](#)**Issue Dt:** 07/13/2004**Application #:** 09973643**Filing Dt:** 10/09/2001**Publication #:** [20020067768](#)**Pub Dt:** 06/06/2002**Inventor:** Robert N. Hurst**Title:** RATE CONTROL FOR BITSTREAM RE-ENCODING**Assignment: 1****Reel/Frame:** [012251/0474](#)**Recorded:** 10/09/2001**Pages:** 2**Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).**Assignor:** [HURST, ROBERT N.](#)**Exec Dt:** 10/08/2001**Assignee:** [SARNOFF CORPORATION](#)

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